

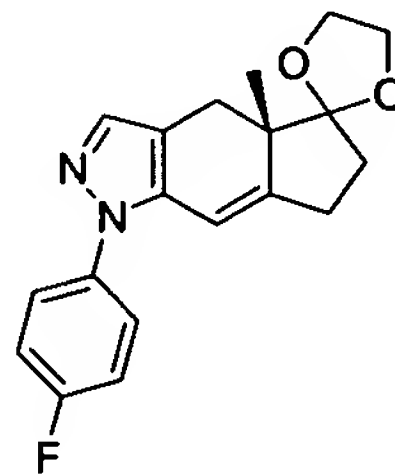
REMARKS

Status of Claims

Claims 8-14 and 22 are pending in the application prior to the instant amendments. Claim 14 is currently amended, no claim is added or canceled, leaving claims 8-14 and 22 pending upon entry of the instant amendments.

Indication of allowability - Applicants acknowledge the examiner's indication of allowability of claims 11-13.

Amendment to claim 14 - Claim 14 is amended, as indicated in the listing of



claims herein, to delete the following compound

from the claim.

Support for this amendment is found at least at page 38 of the application (see Example 138). No new matter has been added. Accordingly, entry thereof is respectfully requested.

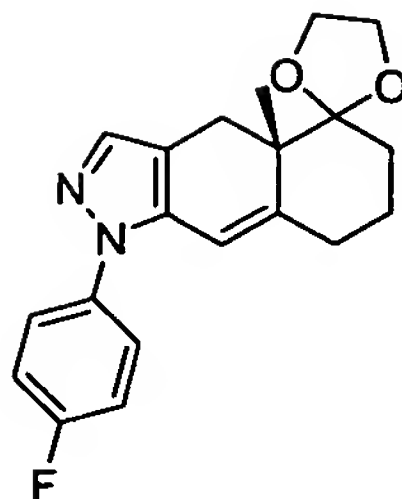
Rejections under 35 U.S.C. §102 (e)

At page 2 of the Office Action, the Examiner rejects claims 8-10, 14 and 22 under 35 U.S.C. §102(e). In particular, the Examiner states:

4. Claims 8-10, 14 and 22 rejected under 35 U.S.C. 102(e) as being anticipated by the following three references: a) Ali et al. (WO 04/075840; step 3 on p. 37), scheme 3 on p. 32, disclosure on p. 35-36; b) Ali et al. (WO 04/026248, step c on p. 39); c) Ali et al. (WO 2003/086294, step 3 on p. 43).

...

The three references teach the compound shown below in a composition comprising 40 mL of acetic acid in 1 L of water (ie. Aqueous solution).



(Office Action dated May 01, 2008, pages 2-3)

Applicants respectfully traverse as the rejected claims are not anticipated by the cited references.

Claims 8-10 – As an initial matter, Applicants respectfully ask the Examiner to clarify his/her position over claims 8-10. On page 2 of the current Office Action, the Examiner appears to be in agreement with Applicants that these claims are not anticipated by the cited references as the Examiner stated in the Response to Argument that:

2. Applicant's amendments to the claims have been considered. The amendments are successful in overcoming all grounds of objection/rejection set forth in the previous office action. Therefore, these grounds of objection/rejection are hereby withdrawn.

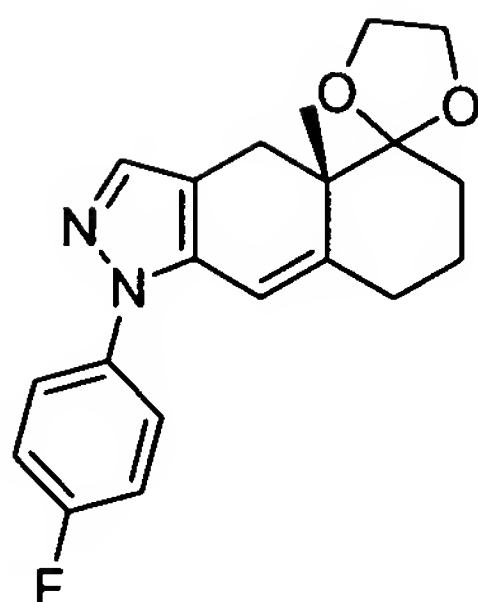
(Office Action dated May 01, 2008, pages 2; emphasis added by the Examiner)

In the previous Office Action dated December 17, 2007, the Examiner rejected claims 8-10 over the same three references on substantially the same basis. Specifically, the previous Office Action stated:

7. Claims 8-10, 22, 28 and 29 rejected under 35 U.S.C. 102(e) as being anticipated by the following three references: a) Ali et al. (WO 04/075840; step 3 on p. 37); b) Ali et al. (WO 04/026248, step c on p. 39); c) Ali et al. (WO 2003/086294, step 3 on p. 43).

...

The three references teach the compound shown below in a composition comprising 40 mL of acetic acid in 1 L of water (ie. Aqueous solution).



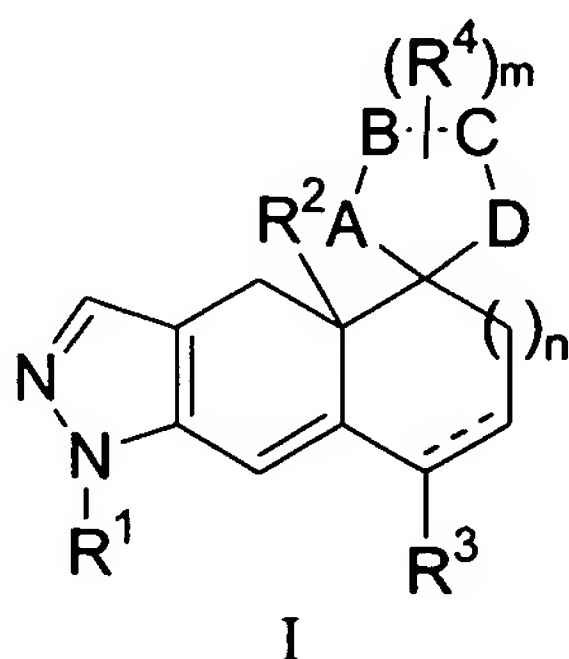
(Office Action dated December 17, 2007, pages 3-4)

Thus, it appears that the Examiner agrees that claims 8-10, as amended in the previous Amendment, are not anticipated by the cited references as "[t]he amendments are successful in overcoming all grounds of objection/rejection set forth in the previous office action" (page 2 of the current Office Action dated May 1, 2008).

However, the Examiner then repeated the same rejections over the same three references for the same reasons in the current Office Action. This rejection appears to be contradictory to her/his own position that the Amendment submitted on February 1, 2008 resulting in the current claims 8-10 "are successful in overcoming all grounds of objection/rejection set forth in the previous office action". Applicants respectfully ask for clarification.

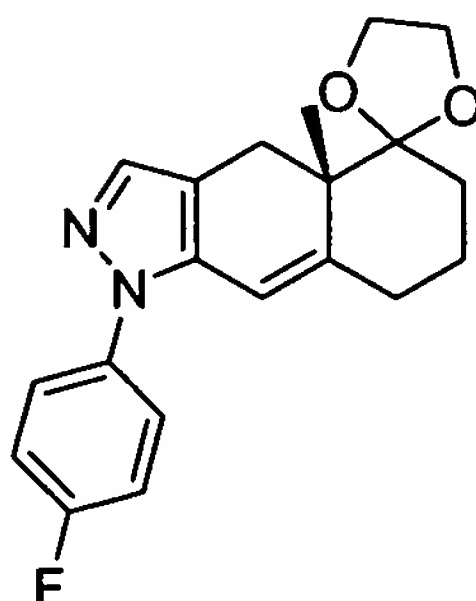
In any event, Applicants respectfully argue that claim 8 and its dependent claims 9-10 are novel over the three cited references as none of the references disclose all limitations of these claims. In particular, current claim 8 (as amended in the previous Amendment) states that (emphasis added):

8. A pharmaceutical composition comprising a compound of Formula I



...

with the proviso that the compound of Formula I is other than



Thus, none of the three cited references disclose all limitations of current claim 8. Therefore, claim 8 and its dependent claims 9-10 are novel over the three cited references.

Accordingly, Applicants respectfully request the §102(e) rejection over claims 8-10 be withdrawn.

Claim 14 – Applicants point out that the instantly amended claim 14 is novel over the three cited references as none of the references disclose all limitations of this claim. Accordingly, Applicants respectfully request the §102(e) rejection over claim 14 be withdrawn.

Claim 22 – Claim 22 depends from the allowable claim 11 and further requires that the pharmaceutical composition to comprise a pharmaceutically acceptable carrier. Specifically, claim 22 states that:

22. A pharmaceutical composition comprising a compound according to claim 11 in combination with a pharmaceutically acceptable carrier.


Since claim 11 is novel and has been allowed, its dependent claim 22 also is novel over the cited references. Accordingly, Applicants respectfully request the §102(e) rejection over claim 22 be withdrawn.

In view of the foregoing amendments and remarks, Applicants submit that the application is now in condition for allowance and passage thereto is earnestly requested. Any additional fees required in connection with this Amendment may be taken from Merck Deposit

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Account No. 13-2755. The Examiner is invited to contact the undersigned attorney at the telephone number provided below if such would advance the prosecution of the case.

Respectfully submitted,

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